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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,672	10/10/2000	Yasir Skeiky	014058-009041US	2671

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EXAMINER

SWARTZ, RODNEY P

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/688,672

Applicant(s)

SKEIKY ET AL.

Examiner

Rodney P. Swartz, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3 January 2--5.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-27, 105-109 and 111-115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 7, 8, 11-18, 20-27, 105-109, 111-115 is/are allowed.
- 6) ☒ Claim(s) 5, 6 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Applicants' Response to Office Action, received 3 January 2005, is acknowledged. Claims 1, 4, 7, 11, 15, and 18 have been amended.
2. Claims 1-8, 11-27, 105-109, and 111-115 are pending and under consideration.

Rejections/Objections Withdrawn

3. The objection to claim 11 for depending from a canceled claim is withdrawn in light of the amendment of the claim.
4. The rejection of claims 2, 3, 105 and 106 under 35 U.S.C. 112, second paragraph, is withdrawn in light of applicants' remarks.

Applicants state that the scope of the first set of claims, i.e., 2 and 3, is distinct from that of the second set of claims, i.e., 105 and 106 due to the amendment of the claims to recite that the composition of claim 1 comprises at least the named antigens/fusion polypeptide and a pharmaceutically-acceptable excipient.

5. The rejection of claims 5, 6, 107, and 108 under 35 U.S.C. 112, second paragraph, is withdrawn in light of applicants' remarks.

Applicants state that the scope of the first set of claims, i.e., 5 and 6, is distinct from that of the second set of claims, i.e., 107 and 108 due to the amendment of the claims to recite that the composition of claim 5 comprises at least the named antigens/fusion polypeptide and a pharmaceutically-acceptable excipient.

6. The rejection of claims 8, 11, 109, and 111 under 35 U.S.C. 112, second paragraph, is withdrawn in light of applicants' remarks.

Applicants state that the scope of the first set of claims, i.e., 8 and 11, is distinct from that of the second set of claims, i.e., 109 and 111 due to the amendment of the claims to recite

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that the composition of claim 8 comprises at least the named antigens/fusion polypeptide and a pharmaceutically-acceptable excipient.

7. The rejection of claims 13, 14, 112, and 113 under 35 U.S.C. 112, second paragraph, is withdrawn in light of applicants' remarks.

Applicants state that the scope of the first set of claims, i.e., 13 and 14, is distinct from that of the second set of claims, i.e., 112 and 113 due to the amendment of the claims to recite that the composition of claim 13 comprises at least the named antigens/fusion polypeptide and a pharmaceutically-acceptable excipient.

8. The rejection of claims 16, 17, 114, and 115 under 35 U.S.C. 112, second paragraph, is withdrawn in light of applicants' remarks.

Applicants state that the scope of the first set of claims, i.e., 16 and 17, is distinct from that of the second set of claims, i.e., 114 and 115 due to the amendment of the claims to recite that the composition of claim 16 comprises at least the named antigens/fusion polypeptide and a pharmaceutically-acceptable excipient.

Rejections Maintained

9. The rejection of claims 5 and 19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Pat. No. 6,592,877, is maintained for reasons of record.

Applicants state that they will consider filing a terminal disclaimer once all pending claims in the present application are indicated as otherwise allowable.

The examiner has considered applicants argument, but until a terminal disclaimer is actually submitted, the rejection is maintained.

New Rejection Necessitated by Amendment

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 depends from a rejected claim.

Conclusion

12. Claims 5, 6, and 19 are finally rejected. Claims 1-4, 7, 8, 11-18, 20-27, 105-109, and 111-115 appear to be allowable over the prior art of record.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


RODNEY P SWARTZ, PH.D
PRIMARY EXAMINER
Art Unit 1645

April 6, 2005